ORIGINAL

Supreme Court, U.S.
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No._____

In The
Supreme Court of the United States

ELIJAH MANUEL,

Petitioner,

14-9496

vs.

CITY OF JOLIET, a municipal corporation, et al.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED

Should the 7th Circuit's decision in *Newsome v. McCabe*, 256 F.3d 747 (7th Cir. 2010) that a Fourth Amendment Section 1983 malicious prosecution is not cognizable be upheld.

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this Petition is as follows:

CITY OF JOLIET, ILLINOIS, A MUNICIPAL CORPORATION

OFC. TERRENCE J. GRUBER

OFC. THOMAS CONROY

SGT. SCOTT P CAMMACK

OFC. AARON BANDY

OFC. JEFFREY GERMAN

SGT JOHN STEFANSKI

SGT JOSEPH ROSADO

OFC. JEFFREY KNELLER

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STATEMENT

For the reasons set forth in this Response To Petition For Writ of Certiorari, Respondents respectfully request that the Petition For Writ Of Certiorari be denied in that the Court's decision in *Newsome v. McCabe*, 256 F.3d 747 (7th Cir. 2010) previously held that a Fourth Amendment Section 1983 malicious prosecution is not cognizable.

ARGUMENT

I. ILLINOIS PROVIDES AN ADEQUATE REMEDY FOR MALICIOUS PROSECUTION

42 U.S.C. §1983 malicious prosecution claims are only cognizable if state law does not provide an adequate remedy *Newsome v. McCabe*, 256 F.3d 747, 750 (7th Cir. 2001).

Manuel claims that he was unreasonably seized and falsely arrested by Joliet police officers on March 18, 2011. (A-23, A-58, A-63-64). Manuel further claims that Defendant police officers prepared false reports and provided perjured testimony that led to false charges being levied against him and continued his detainment. (A 23, A-64). Manuel further argues that Defendant Gruber provided false testimony before the grand jury which also led to Manuel's continued detainment. (A 103, A 116-121). The judge dismissed the charges and entered an order of *nolle prosequi* on May 4, 2011. (A-44, A-65). Manuel has surrendered his various claims with the exception of his insistence that he has a viable claim for malicious prosecution under §1983 through the Fourth Amendment.

Llovet v. City of Chicago, 761 F.3d 759 (7th Cir. 2014) is applicable to this matter and addresses the issues raised by Manuel. In *Llovet*, plaintiff sued two Chicago police officers under 42 U.S.C. §1983 for malicious prosecution after being acquitted of aggravated battery. *Id.* at 760. Llovet claimed that the officers had prepared false police reports and used them to persuade a state prosecutor to file a charge of aggravated battery against him. *Id. Llovet* was dismissed by the District Court on the authority of the decision in *Newsome v. McCabe*, 256 F.3d 747, 750-

751 (7th Cir. 2001), that held a federal suit for malicious prosecution by state officers is permissible only if the state in which the plaintiff had been prosecuted does not provide an adequate remedy, which Illinois does. *Id.* (internal citations omitted). Llovet appealed the dismissal and asked this Court to overrule *Newsome* and hold that 42 U.S.C. §1983 authorizes a federal claim of malicious prosecution regardless of what alternative remedy a state provides. *Id.* The Court rejected Llovet's arguments and affirmed the dismissal.

In upholding the dismissal in *Llovet*, the 7th Circuit once again reaffirmed that the Fourth Amendment does not regulate the length of detentions after a judge has determined that there is probable cause to detain a person on a criminal charge. *Id.* at 762. The 7th Circuit has repeatedly rejected the continuing seizure approach and held that the scope of a Fourth Amendment claim is limited up until the point of arraignment. *Id.*, citing *Wiley v. City of Chicago*, 361 F.3d 994, 998 (7th Cir. 2004). Once police action gives way to legal process the Fourth Amendment falls out of the picture and the detainee's claim that the detention is improper becomes a claim of malicious prosecution violative of due process. *Llovet*, at 763. If there is an adequate state remedy for a claim of prolonged detention, such as malicious prosecution and false imprisonment, then the detention cannot be challenged under the Fourth Amendment or as a federal violation of due process. *Id.* at 764.

As was done in the *Llovet* case, this Court must deny the Petition For Writ of Certiorari and reject the arguments to expand the scope of the Fourth Amendment and create a duplicative federal remedy. Manuel's claims are significantly similar to those of Llovet. Manuel also seeks adoption of the continuing seizure approach and

alleges that the arrest was wrongful and resulted in the detention, and that wrongful acts committed after he had been detained were separate violations of the Fourth Amendment. Specifically, Manuel alleges that the false police reports led to the false charges which led to the continued detention. In addition, he alleges that the false grand jury testimony of Gruber was a separate violation of the Fourth Amendment and also contributed to the continued detention. However, as is clear from *Llovet*, when after an arrest or seizure a person is not let go when he should be, the Fourth Amendment gives way to the due process clause as a basis for challenging his detention.

An unlawfully protracted detention is actionable under Illinois law as malicious prosecution. *Llovet v. City of Chicago*, at 760, 764, citing *Swick v. Liautaud*, 169 Ill.2d 504, 215 Ill.Dec. 98, 662 N.E.2d 1238, 1242 (Ill. 1996). Therefore, since Illinois provides an adequate state remedy, a federal suit for malicious prosecution is not permissible. *Id.* Based on the foregoing, Manuel fails to state a cognizable claim for 42 U.S.C. §1983 malicious prosecution and the Petition For Writ of Certiorari must be denied.

II. ANY 42 U.S.C. §1983 CLAIMS ARE TIME-BARRED UNDER THE TWO-YEAR STATUTE OF LIMITATIONS

The statute of limitations for §1983 claims is the state law period for personal injury torts. *Wilson v. Garcia*, 471 U.S. 261, 280 (1985). Thus, because Illinois law provides a two-year statute of limitations for personal injury actions, 735 ILCS 5/13-202, Plaintiff's §1983 claims must have been brought within two years of those claims' accrual—that is, within two years of the date when the plaintiff knew or

should have known that his constitutional rights were violated. *Kelly v. City of Chicago*, 4 F.3d 509, 511 (7th Cir. 1993).

Here, Manuel's complaint alleges that he was arrested and detained on March 18, 2011. He further alleges that he was arraigned on April 8, 2011. Although this is not the time at which he became subject to legal process, it is the only date provided relative to judicial proceedings and it simply reinforces the fact that the complaint was filed outside the time limits even when utilizing the arraignment date. Because Manuel's arrest occurred on March 18, 2011 and he was arraigned on April 8, 2011, but the complaint was not filed until April 10, 2013, any §1983 claims are time-barred.

CONCLUSION

For the foregoing reasons, Defendants City of Joliet, Gruber, Conroy, Cammack, Bandy, German, Stefanski, Rosado and Kneller respectfully request that this Honorable Court deny the Petition For Writ Of Certiorari.

Respectfully submitted,

By: /s/ Martin J. Shanahan, Jr.
One of Defendants' attorneys

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PROOF OF SERVICE

TO: Mr Stanley Bert Eisenhammer
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PLEASE TAKE NOTICE that on the 4th day of December, 2015, I have caused to be filed with the Clerk of the United States Supreme Court, our Response To Petition For Writ of Certiorari, a copy of which is attached hereto and served upon you.

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Respectfully submitted,

By: /s/ Martin Shanahan Jr.
One of their attorneys

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Filing and Response To Petition For Writ of Certiorari were served upon the above named by sending two copies via U.S. mail on the 4th day of December, 2015.

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/s/ Martin Shanahan, Jr.

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